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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,273

07/19/2006

Boris Emmanuel Rachmund De Ruyter

US040041US2

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02/22/2010

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

WONG, ALBERT KANG

ART UNIT

PAPER NUMBER

2612

MAIL DATE

DELIVERY MODE

02/22/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,273	Applicant(s) DE RUYTER ET AL.	
	Examiner ALBERT K. WONG	Art Unit 2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2612

1. This Office action is in response to the amendment filed November 12, 2009. Claims 1-21 are pending. Claims 12 and 21 have been amended as requested to correct an antecedent basis problem. The remarks have been considered. Applicant's remarks are not persuasive and thus, the prior rejections have been maintained. The Examiner has added clarifying remarks in response to applicant's comments. However, the changes do not change the substantive nature of the rejections.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (7,233,316).

Regarding claim 1, Figure 3 and col. 4-5 teaches a remote controller that detects motion of the apparatus and interprets the motion to identify a command and executes the command. The execution of the command includes the transmission of data between the remote control to the device controlled (base device). Smith does not explicitly teach a memory and a processor.

Art Unit: 2612

It is conventional for a remote control to include a processor and memory. It would have been obvious to use conventional means for their known functionality.

Regarding claim 2, the remote control in Smith sends a command to control an appliance. This is considered the claimed second command.

Regarding claims 3-5, Smith discloses a plurality of different detected motions that corresponds with commands. The claimed particular motion is considered an obvious design choice since any motion may correspond with a command and the particular motion is not critical.

Regarding claim 6-8, it would have been obvious to create and/or add new motion models by detecting the motion of the device since the detected motion is compared with a recorded motion.

Regarding claim 9, Smith teaches a gyroscope which is a three dimensional motion sensor.

Regarding claim 10, Figure 3 shows various motion models.

Regarding claim 11, it would have been obvious to compare measured motion to a motion model to determine the particular input commands since a comparison is necessary to determine the particular command entered.

Regarding claims 12-20, these claims are the method equivalent of the apparatus claims. Since the apparatus has been shown to be obvious, the method of using the apparatus in its intended manner would also have been obvious.

Art Unit: 2612

Regarding claim 21, this claim recites the software for controlling the processor embodied on a readable medium. Since the processor with the associated function has been shown to be obvious, the software for performing the function would also have been obvious.

Response to Remarks

5. In preparing the prior Office action, the Examiner presumed that applicant would have a basic knowledge of the workings of a remote control since this ubiquitous device is found in virtually every household. Based on applicant's comments, it would appear that further explanation is required. A remote control is an electrical device that transmits a signal (i.e. infrared) upon the activation of a button that is located on the face of the device. The signal is received by a target device and interpreted as a command based on a predetermined command set. The interpreted command is then used to effectuate a desired function on the controlled device. For example, pressing the on key in the remote control is used to turn on the device without the user having to physically interact with the device. Televisions are the most common devices controlled by remote controls.

The remote control in Smith is an improvement over a conventional remote control since commands may be effectuated without the user interacting with specific buttons dedicated to specific commands. Instead, gestures or detected motions by the remote control are interpreted as inputs. In other words, instead of just using buttons to generate signals for transmission, the detection and interpretation of motions are used to generate the commands. For example, in col. 5, lines 13-20 of Smith, the reference teach how bump commands like a left-bump may be used to indicate a rewind function. Another example may be found in col. 5, lines 53-55 which

Art Unit: 2612

teaches a wagging gesture or the activation of a dedicated button launches the options access display.

Thus, although the Office action does not specifically cite the language of the claim, a plain interpretation of the reference, and in particular the cited passages, would have informed an applicant with ordinary knowledge of remote controls that motion detected by the remote control results in the transmission of data between the remote control and the controlled device.

Otherwise, what would be the purpose of the remote control device?

Should applicant require further explanation of the workings of a remote control, he is encouraged to contact the Examiner for further explanation. For the above reasons, the Examiner asserts that a prima facie case was made in the prior Office actions, and applicant's arguments are not persuasive.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 2612

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALBERT K. WONG whose telephone number is (571)272-3057.

The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian A. Zimmerman can be reached on 571-272-3059. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Albert K Wong/
Primary Examiner, Art Unit 2612

February 11, 2010